IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ Petition No. 662 of 2002 (S/B)

Date of decision: 13th August, 2004

For the approval of :

Hon'ble Chief Justice V.S. Sirpurkar.

Hon'ble Mr. Justice Irshad Hussain.

- Whether the order/judgment should be sent to the reporters for reporting? (yes)

- Whether the reporters be allowed to see the judgment? (yes)

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IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 662 of 2002 (S/B)

Dr. Virendra Kumar S/o Late Mr. Sri Ram,
R/o Rajkeya Alopathic Hospital Chhoei,
Via Ram Nagar, District Nainital. …….. Petitioner

Versus

State of Uttaranchal through
Secretary, Medical Education, Secretariat,
Dehradun & others. …….. Respondents

Mr. Sharad Sharma, learned counsel on behalf of the petitioner.
Mr. K.P. Upadhyaya, learned Brief Holder for the State.

Coram: Hon'ble V.S. Sirpurkar, C.J.
Hon'ble Irshad Hussain, J.

Date: 13th August, 2004

(Per Hon'ble the Chief Justice)

1. This is a very interesting case, where the petitioner has suffered because of his own mistake. Few facts will be necessary to mention here.

2. Petitioner joined as an ad hoc Ayurvedic Medical Officer on 28.2.92. He submitted his joining report on 27.3.1992. But he was not allowed to join in his post because of a telex message dated 4.3.1992 to the effect that the petitioner, having qualified himself from outside the State of U.P., was not entitled to serve in the State of U.P. Petitioner was, thus, not permitted to join. He, therefore, approached the Allahabad High Court by way of a writ petition and obtained an interim order in his favour on 9.4.1992. He probably reported for joining on 18.4.1992, which is a very relevant date in this writ petition. Eventually, he was not allowed to join till 1.10.1992. The said writ petition also came to be allowed by the Allahabad High Court by its judgment dated 16.7.1996 and the said telex message was quashed, thereby, ordinarily the petitioner would have been entitled to actually get his seniority from 27.3.1992 because is was on that date

that he was stopped from joining. The petitioner was not paid his salary from 18.4.1992 upto 1.10.1992. He, therefore, filed a claim petition No. 815 of 1999. In this claim petition, however, he claimed the salary only from 18.4.1992. That claim petition was also, eventually, allowed by the judgment of the Tribunal dated 13.11.2000, in which the Tribunal directed the payment of salary between 18.4.1992 to 1.10.1992. The Tribunal, however, did not grant the interest though the petitioner had claimed the same. Now, this has caused an apprehension in the mind of the petitioner that his seniority will be reckoned not from 27.3.1992, but from 18.4.1992 and in the process, he would loose since the other persons, who have joined on 27.3.1992 or therefore, would be rendered senior to him. He, therefore, filed the present writ petition.

3. In this writ petition, the prayer is to issue a writ, order or direction in the nature of mandamus commanding the respondents to treat the period of service from 27.3.1992 to 17.4.1992 as a period in service and to accord all the service benefits including the seniority treating the said period in continuity. Now, it is obvious that the petitioner is provisionally allocated to the State of Uttaranchal from the State of U.P., where he was selected and serving. It is worth nothing that before the Tribunal also it was the State of U.P., which was a party though the Tribunal has decided the matter after the relevant dated i.e. 9.11.2000 i.e. the date hen the State of Uttaranchal came into being. It seems that the judgment of the Tribunal has remained unchallenged. We, however, did not find anything in this writ petition to suggest that the petitioner had, in any manner, made any representation to the state of Uttaranchal for the manner, made any representation to the state of Uttaranchal for the correct reckoning of his seniority. It may be that the Tribunal may have ordered the payment of salary between 18.4.1992 to 1.10.1992, but that was not in relation to the seniority of the petitioner, which, in our opinion, would be an independent issue. We, therefore, close this writ petition by directing the petitioner to make a representation to the State of Uttaranchal where he is provisionally allocated or to the State

of U.P., if he is not finally allocated to claim his seniority w.e.f. 27.3.1992. Needless to mention that if such a representation is made to the State of Uttaranchal, which is a party in this writ petition, the State of Uttaranchal shall decide the said representation in the light of the earlier mentioned judgments of the Tribunal as also of the Allahabad High Court dated 13.11.2000 and 16.7.1996 respectively. The said representation, if made, shall be disposed of within six months of its receipt.

4. With this direction, we dispose of the writ petition.

(Irshad Hussain, J.)
13.08.2004

(V.S. Sirpurkar, C,J.)
13.08.2004

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